

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JEROME MANNING,

Plaintiff,

v.

SWEDISH MEDICAL CENTER, *et al.*,

Defendants.

Case No. C15-949RSL

ORDER DISMISSING
DEFENDANTS

Before the Court is plaintiff's Complaint. Dkt. # 4. Plaintiff brings this action pro se and in forma pauperis. Having screened the Complaint pursuant to 28 U.S.C. § 1915(e), the Court finds as follows.

I. BACKGROUND

Plaintiff, an African-American, was hired by defendant Swedish Medical Center ("SMC") as a Material Distribution Technician ("MDT") in 2008 and was terminated by SMC in December 2013. Dkt. # 4 (Compl.) ¶¶ 3.7, 3.35. Plaintiff brings this action against SMC, Providence Health & Services ("Providence"), and multiple SMC employees; plaintiff alleges that these defendants intentionally discriminated against him within the meaning of Title VII of the Civil Rights Act, subjecting him to harassment, disparate treatment, wrongful termination and retaliation. Id. ¶¶ 5.1-5.9. Plaintiff additionally brings this action against his union, SEIU

1 1199NW (“SEIU”), claiming that the union is liable to plaintiff for “negligent misrepresentation
 2 of the Contract Bargaining Agreement.” *Id.* ¶¶ 5.2. Plaintiff’s claim appears to be that the union
 3 misled plaintiff with respect to the terms of its bargaining agreement with SMC.

4 II. LEGAL STANDARD

5 Once a complaint is filed in forma pauperis, the Court must dismiss it prior to service if it
 6 “fails to state a claim on which relief can be granted,” 28 U.S.C. § 1915(e)(2)(b)(ii); see Talley
 7 v. Jackson, 2015 WL 3796339, at *1 (W.D. Wash. June 18, 2015) (citations omitted). The legal
 8 standard for dismissing a complaint for failure to state a claim under § 1915(e)(2)(B)(ii) parallels
 9 that used when ruling on whether to dismiss an action under Fed. R. Civ. P. 12(b)(6). The
 10 complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is
 11 plausible on its face. Ashcroft v. Iqbal, 556 U.S. 662, 664 (2009); see Bell Atlantic Corp. v.
 12 Twombly, 550 U.S. 544, 555 (2007) (factual allegations must be “enough to raise a right to relief
 13 above the speculative level.”). The complaint may be dismissed if it lacks a cognizable legal
 14 theory or states insufficient facts to support a cognizable legal theory. Zixiang v. Kerry, 710
 15 F.3d 995, 999 (9th Cir. 2013).

16 The Court holds pro se plaintiffs to less stringent pleading standards than represented
 17 plaintiffs and liberally construes a pro se complaint in the light most favorable to the plaintiff.
 18 See Erickson v. Pardus, 551 U.S. 89, 93 (2007) (“[A] pro se complaint, however inartfully
 19 pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.”)
 20 (internal quotation omitted). Nevertheless, § 1915(e) “not only permits but requires a district
 21 court to dismiss an in forma pauperis complaint that fails to state a claim.” Lopez v. Smith, 203
 22 F.3d 1122, 1229 (9th Cir. 2000) (en banc). When dismissing a complaint under § 1915(e), the
 23 Court gives pro se plaintiffs leave to amend unless “it is absolutely clear that the deficiencies of
 24 the complaint could not be cured by amendment.” See Cato v. United States, 70 F.3d 1103,
 25 1106 (9th Cir. 1995).

III. DISCUSSION

The Complaint fails to allege facts supporting plaintiff's claims against Providence. While the Complaint identifies Providence as an affiliate of SMC, and identifies defendant Rian Brown as a current Providence employee, Dkt. # 4 (Compl.) ¶¶ 1.9, 2.1, the Complaint indicates that Brown undertook his alleged harmful conduct in July 2013 while he was Interim Human Resources Director for SMC, id. ¶¶ 3.21-3.22; the Complaint does not state that Brown was working for Providence at this time. The Complaint does not articulate how Providence (or any Providence employee) specifically harmed plaintiff. Furthermore, plaintiff fails to assert any facts supporting his claim that SEIU "negligently misrepresented" the terms of the bargaining agreement between SEIU and SMC.

Finally, plaintiff cannot sue the individual defendants in this case under Title VII. See Pink v. Modoc Indian Health Project, Inc., 157 F.3d 1185, 1189 (9th Cir. 1998) ("[C]ivil liability for employment discrimination does not extend to individual agents of the employer who committed the violations, even if that agent is a supervisory employee."); Miller v. Maxwell's Int'l Inc., 991 F.2d 583, 587 (9th Cir. 1993), cert. denied, 510 U.S. 1049 (1994). It follows that plaintiff's Title VII claims against defendants Messer, Marshall, Moberly, Gallagher, Brown and Cary must be dismissed.

IV. CONCLUSION

For all of the foregoing reasons, defendants Providence, SEIU, Messer, Marshall, Moberly, Gallagher, Brown and Cary are DISMISSED under 28 U.S.C. § 1915(e) due to plaintiff's failure to state a claim against them. Plaintiff's claims against SMC may go forward, and the Clerk of Court is directed to issue summons as to this defendant. As plaintiff's case against SMC is ongoing, plaintiff may move if he so chooses under Federal Rule of Civil Procedure 15(a) to amend the Complaint to state valid claims against the dismissed defendants and correct the deficiencies identified in this Order. Pursuant to Local Civil Rule 15, plaintiff must attach a copy of the proposed amended complaint as an exhibit to this motion to amend, and must indicate how it differs from the current Complaint.

DATED this 9th day of July, 2015.



Robert S. Lasnik

United States District Judge